

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Walter Norton

v.

Civil No. 06-cv-282-JD

United States of America

O R D E R

The petitioner has filed a motion pursuant to 28 U.S.C. § 2255. The petitioner was sentenced on June 16, 2005. The motion was filed on July 28, 2006. The court had previously granted the petitioner permission to file the petition by August 16, 2006.

The petitioner claims that his counsel was ineffective for failing to point out at the sentencing hearing that the petitioner did not qualify as a career offender because misdemeanor convictions were used to establish that status. The convictions themselves are not in dispute.

Application Note 1 for U.S.S.G. § 4B1.2 provides in part as follows:

“Prior felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed.

Therefore, while the two predicate assault and battery convictions listed in paragraphs 39 and 41 of the Presentence

Investigation Report may be denominated as misdemeanors under Massachusetts law, what is significant is that they are punishable by imprisonment for a term of 2 1/2 years (see attached copies of complaints). Counsel was not ineffective for failing to raise or appeal an issue that clearly had no merit.

Petition dismissed.


Joseph A. DiClerico, Jr.
United States District Judge

August 7, 2006

cc: Walter Norton, pro se
Aixa Maldonado-Quinones, Esquire